

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ADAMS FAMILY, *et al.*

Plaintiffs,

versus

McDERMOTT INTERNATIONAL, INC.
et al.

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CIVIL ACTION NO. H-09-1208

**ORDER ADOPTING MAGISTRATE JUDGE'S
MEMORANDUM AND RECOMMENDATION**

The Court has reviewed the Memorandum and Recommendation (Instrument No. 102) signed by Magistrate Judge Mary Milloy on February 24, 2010, regarding **Instrument 71**. Plaintiff timely filed objections. Defendants subsequently filed a response to Plaintiff's Objections, Instrument No. 106, on March 26, 2010, and the Court has reviewed the Memorandum and Recommendation and objections and response and made a de novo review of the Magistrate Judge's recommended dispositions to which objections were raised, Rule 72(b), Fed. R. Civ. P.; 28 U.S.C. § 636(b)(1)®; *McLeod, Alexander, Powel & Apffel P.C. v. Quarles*, 925 F.2d 853, 855 (5th Cir. 1991), and after consideration of the applicable law, is of the opinion that said Memorandum and Recommendation should be adopted by this Court


Although the Plaintiffs have not actually moved for leave to amend their pleadings, they have expressed an interest in doing so. The Defendant objects to the Court giving the Plaintiff any leave to re-plead their case and alleges that the Plaintiffs have already had two opportunities to present their claim to this Court. Although there have been two sets of pleadings in this case that were consolidated into the cause of action that is now pending before this Court, the Plaintiffs

have not actually sought leave from this Court previously to amend their pleadings. The Court is not entirely convinced that the Plaintiff would be able to re-plead this case in a way that would allow them to overcome the numerous legal obstacles addressed in the Magistrate's Memorandum and Recommendation, the Court will allow the Plaintiffs an opportunity to file a motion for leave to amend their case to which they should attach their proposed second amended complaint.

Accordingly, it is ORDERED, ADJUDGED and DECREED that United States Magistrate Judge Milloy's Memorandum and Recommendation is hereby adopted by this Court. Defendant's Motion to Dismiss (**Instrument No. 71**) is **GRANTED and the Plaintiff's case is dismissed without prejudice** to give the Plaintiff the opportunity to seek leave to amend their pleadings. If the Court should later determine that leave to amend should not be granted, an amended order will be entered dismissing this case with prejudice.

The Clerk shall enter this Order and provide all parties with a true copy.

SIGNED on this the 26th day of March, 2010, at Houston, Texas.



VANESSA D. GILMORE
UNITED STATES DISTRICT JUDGE